

EXHIBIT 3

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

HAMAN, INC.

PLAINTIFF,

VS.

CASE NO. NO. 2:18-CV-1534-JHE

CHUBB CUSTOM INSURANCE COMPANY,

DEFENDANT.

PLAINTIFF'S AMENDED RULE 26 DISCLOSURES

Comes now the Plaintiff and amends its disclosures pursuant to evidence provided to Defendant in this cause, through testimony and documents, and would supplement its Rule 26 information as follows:

1) Testimony of Chuck Howarth of The Howarth Group was taken by the Defendant on January 8, 2020 in Franklin, Tennessee. Said deposition was actually the third sworn testimony taken of Mr. Howarth regarding the damages issue in this case. Previously, counsel for Chubb requested sworn testimony from The Howarth Group and it was provided by Mr. Howarth on September 26, 2017 and December 12, 2017 by way of an examination under oath. Further, Mr. Howarth's Rule 26 information was provided previously. A summary of his opinions related to the fire loss claim are set forth in a 225-page written report which was provided to Chubb in March of 2015. The Howarth Group has also

prepared a separate wind and roofing damage report dated January 10, 2016 consisting of 52 pages and numerous photos. That report and photos have also been provided to Chubb.

2) Mr. Howarth was questioned concerning replacement costs and depreciation factors in his January 8, 2020 deposition. Mr. Howarth stated what ACV (actual cash value) would be for his RCV (replacement cost value) estimates. Mr. Howarth has created a report to reflect an appropriate depreciation factor, as per his testimony. A one-page report detailing those items encompassed in his previous 225-page written report but, also providing ACV costs, is provided herewith as Exhibit "A" and is titled "Knights Inn, Fire Loss."

3) Similarly, Chubb's counsel questioned why Mr. Howarth had not provided an ACV computation or report concerning the wind or tornado claim, with a depreciation schedule. Mr. Howarth stated what the ACV would be and has prepared a one-page document reflecting same. That report is attached hereto as Exhibit "B".

4) To clarify, however, the estimates for replacement costs for the fire and wind loss claims do not set forth the entire damage claims of the Plaintiff. These estimates were valid as of the day of their creation. Because of failure to pay for repair costs at the time of the losses being reported, so as to allow the Plaintiff to repair its premises and prevent further deterioration by damage and loss of

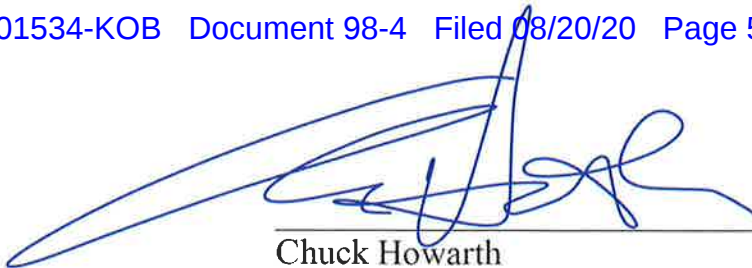
property, the property descended into a state of disrepair and the motel property ceased to do business. The property itself is a total loss¹. The correct replacement costs, under the circumstances, will be those costs to repair or replace at the time the repairs or replacements are made. Mr. Howarth will testify to those costs and will provide documentation for same. Plaintiff has provided Defendant with a video reflecting the current condition of the premises.

5) Mr. Howarth's opinion is that Chubb did not pay sufficient repair monies to prevent further damage to the empty, unprotected, unrepaired building. The buildings, with compromised roofs exposed to the elements, continued to deteriorate until the loss was much worse than that caused by the fire and wind claims, and the property is a total loss.

6) The conduct of Chubb and its designated appraiser, Wade Bushman, in unilaterally withdrawing from the appraisal process after agreeing to same, and choosing an umpire, was improper, a breach of the parties' agreement and in violation of the insurance contract language. Such conduct was unwarranted and unprecedented, and Mr. Howarth has so testified in his January 8, 2020 deposition.

¹ The measure of damages for breach of contract are those that are the natural and proximate consequences of the breach as such may reasonably have been contemplated by the parties as a probable result of the breach. *HealthSouth Rehabilitation Corp. v. Falcon Management Co.*, 799 So.2d 177, 183 (Ala. 2001); *Aldridge v. Dolbeer*, 567 So.2d 1267, 1269 (Ala. 1990); *Kohn v. Johnson*, 565 So.2d 165 (Ala. 1990); *Shiver v. Barrow*, 232 So.2d 676 (Ala. Civ. App. 1970). The measure of damages is what Haman, Inc. suffered by Chubb's failure to perform. *Rickenbaugh v. Asbury*, 185 So. 181 (Ala. Civ. App. 1938); *Hover v. Kirk*, 321 So.2e 214 (Ala. Civ. App. 1975); *Cobbs v. Fred Burgos Const. Co.*, 477 So.2d 335 (Ala. 1985).

Date:



Chuck Howarth

The above-signed agrees that the averments concerning his opinions are true and correct.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that I have on the 14th day of February, 2020, served a true and correct copy of the foregoing to counsel for all parties in this matter via electronic mail.

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Knights Inn, Fire Loss***Depreciation Schedule (Using our Estimate Recap by Trade)***

<u>ITEMS</u>	<u>RCV</u>	<u>Deprec. %</u>	<u>Deprec. \$</u>	<u>ACV</u>
ACOUSTICAL TREATMENTS	67,612.16	15%	10,141.82	57,470.34
CABINETRY	45,929.60	20%	9,185.92	36,743.68
CLEANING	105,629.63	0%	-	105,629.63
CONCRETE & ASPHALT	2,603.63	0%	-	2,603.63
CONTENT MANIPULATION	3,393.30	0%	-	3,393.30
GENERAL DEMOLITION	107,320.02	0%	-	107,320.02
DOORS	32,699.70	10%	3,269.97	29,429.73
DRYWALL	42,430.08	5%	2,121.50	40,308.58
ELECTRICAL	157,738.62	15%	23,660.79	134,077.83
MISC. EQUIPMENT - COMMERCIAL	851.99	0%	-	851.99
FLOOR COVERING - CARPET	42,732.00	30%	12,819.60	29,912.40
FLOOR COVERING - CERAMIC TILE	87,991.20	10%	8,799.12	79,192.08
FINISH HARDWARE	17,689.19	15%	2,653.38	15,035.81
FIRE PROTECTION SYSTEMS	238.77	20%	47.75	191.02
FRAMING & ROUGH CARPENTRY	20,117.48	0%	-	20,117.48
GLASS, GLAZING, & STOREFRONTS	53,012.80	15%	7,951.92	45,060.88
HEAT, VENT & AIR CONDITIONING	827.91	0%	-	827.91
INSULATION	12,238.40	10%	1,223.84	11,014.56
LABOR ONLY	108,173.00	0%	-	108,173.00
LIGHT FIXTURES	2,529.18	10%	252.92	2,276.26
MASONRY	5,919.60	0%	-	5,919.60
MARBLE - CULTURED OR NATURAL	2,311.20	10%	231.12	2,080.08
MIRRORS & SHOWER DOORS	6,400.00	20%	1,280.00	5,120.00
METAL STRUCTURES & COMPONENTS	734.28	0%	-	734.28
PLUMBING	138,970.40	10%	13,897.04	125,073.36
PAINTING	155,600.14	25%	38,900.04	116,700.11
SOFFIT, FASCIA, & GUTTER	14,350.08	10%	1,435.01	12,915.07
STEEL JOIST COMPONENTS	1,503.36	0%	-	1,503.36
STUCCO & EXTERIOR PLASTER	11,059.36	10%	1,105.94	9,953.42
TILE	40,554.40	10%	4,055.44	36,498.96
TEMPORARY REPAIRS	10,226.44	0%	-	10,226.44
WINDOW TREATMENT	3,852.68	0%	-	3,852.68
WALLPAPER	49,691.60	30%	14,907.48	34,784.12
<u>TOTALS (NET Before Q&P)</u>	1,352,932.20		157,940.60	1,194,991.60

DEPRECIATION PERCENT**12%****Settlement Using This Depreciation:**

RCV	\$	1,679,975.33
Depreciation (20% above)	\$	201,597.04
ACV	\$	1,478,378.29



Knights Inn, Tornado Loss***Depreciation Schedule (Using our Estimate Recap by Trade)***

<u>ITEMS</u>	<u>RCV</u>	<u>Deprec. %</u>	<u>Deprec. \$</u>	<u>ACV</u>
ACOUSTICAL TREATMENTS	38,479.82	25%	9,619.96	28,859.87
CLEANING	13,645.94	0%	-	13,645.94
CONCRETE & ASPHALT	71,598.58	0%	-	71,598.58
CONTENT MANIPULATION	5,253.16	0%	-	5,253.16
GENERAL DEMOLITION	221,320.82	0%	-	221,320.82
DRYWALL	427.78	0%	-	427.78
HEAVY EQUIPMENT	40,175.48	0%	-	40,175.48
FLOOR COVERING - CARPET	22,622.54	30%	6,786.76	15,835.78
PERMITS AND FEES	15,000.00	0%	-	15,000.00
FINISH CARPENTRY / TRIMWORK	4,072.14	15%	610.82	3,461.32
FINISH HARDWARE	767.44	25%	191.86	575.58
HAZARDOUS MATERIAL REMEDIATION	475.00	0%	-	475.00
HEAT, VENT & AIR CONDITIONING	8,807.59	20%	1,761.52	7,046.07
INSULATION	10,308.18	10%	1,030.82	9,277.36
LABOR ONLY	135,727.80	0%	-	135,727.80
LIGHT FIXTURES	24,817.73	15%	3,722.66	21,095.07
PLUMBING	243.39	0%	-	243.39
PANELING & WOOD WALL FINISHES	1,355.28	20%	271.06	1,084.22
PAINTING	10,551.62	40%	4,220.65	6,330.97
ROOFING	629,040.59	35%	220,164.21	408,876.38
SCAFFOLDING	2,012.00	0%	-	2,012.00
TILE	1,206.23	20%	241.25	964.98
TEMPORARY REPAIRS	8,293.20	0%	-	8,293.20
WALLPAPER	5,757.77	30%	1,727.33	4,030.44
WATER EXTRACTION & REMEDIATION	3,324.79	0%	-	3,324.79
<u>TOTALS (NET-Before O&P)</u>	1,275,284.87		250,348.88	1,024,935.99

DEPRECIATION PERCENT**20%****Settlement Using This Depreciation:**

RCV	\$1,595,608.00
Depreciation (20% above)	\$ 319,121.60
ACV	\$1,276,486.40

